

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Scotty William Polchow,

Case No. 21-CV-2773 (NEB/JFD)

Plaintiff,

v.

**REPORT AND
RECOMMENDATION**

Minnesota Department of Corrections,

Defendant.

In an Order dated January 3, 2022, this Court ordered Plaintiff Scotty William Polchow to pay an initial partial filing fee of \$44.11, consistent with 28 U.S.C. § 1915(b). (Order at 4, Dkt No. 3.) Mr. Polchow was given 21 days in which to submit the required initial partial filing fee and was warned that failing to do so would result in a recommendation that this action be dismissed without prejudice for failure to prosecute. (*Id.* (citing Fed. R. Civ. P. 41(b)).)

The deadline for payment has now passed, and Mr. Polchow has not submitted the required initial partial filing fee. In fact, Mr. Polchow has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends, in accordance with its prior Order, that this action be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a

plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.'').

Based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute. This Court further recommends that the pending application to proceed without prepaying fees or costs (Dkt. No. 2) be **DENIED AS MOOT** in light of the dismissal of this action.

Dated: February 1, 2022

s/ John F. Docherty
JOHN F. DOCHERTY
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).